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August 26, 1999

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Magalie Roman Salas, Esquire

Secretary

Federal Communications Commission

445 12th Street, S.W., Room TW-B204

Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: MM Docket No. 98-198

RM-9690


Cross Plains, Texas

Dear Ms. Salas:

Transmitted herewith, on behalf of Jayson D. Fritz and Janice M. Fritz, are an original and four copies of their "Comments in Opposition to 'Erratum to "Motion to Withdraw and Dismiss Counterproposal" to Withdraw and Modify to "Motion to Withdraw and Dismiss Part of Counterproposal,""' in the above-referenced proceeding.

Should any further information be required concerning this matter, please communicate with this office.

Very truly yours,
FLETCHER, HEALD & HILDRETH, P.L.C.



Anne Goodwin Crump

Counsel for Jayson D. Fritz and Janice M. Fritz

AGC:mah
Enclosures

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 98-198
Table of Allotments, FM Broadcast Stations.)	RM-9690
(Cross Plains, Texas))	

Directed to: Chief, Allocations Branch

**COMMENTS IN OPPOSITION TO
“ERRATUM TO ‘MOTION TO WITHDRAW AND DISMISS COUNTERPROPOSAL’
TO WITHDRAW AND MODIFY TO
‘MOTION TO WITHDRAW AND DISMISS PART OF COUNTERPROPOSAL’”**

Jayson D. Fritz and Janice M. Fritz (the “Fritzes”), by their attorneys, hereby respectfully submit their Comments in Opposition to the “Erratum to ‘Motion to Withdraw and Dismiss Counterproposal’ to Withdraw and Modify to ‘Motion to Withdraw and Dismiss Part of Counterproposal,’” filed by Sonoma Media Corporation (“Sonoma”) on August 13, 1999. With respect thereto, the following is stated:

1. On December 21, 1998, Sonoma and Gulfwest Broadcasting Company, the predecessor license of KVCQ(FM), Cuero, Texas, submitted their “Comments and Counterproposal” in the above-captioned proceeding.¹ In that pleading, Sonoma sought to upgrade and relocate KVCQ(FM).

¹ Since that time, the license for KVCQ(FM) has been assigned from Gulfwest Broadcasting Company to Sonoma, so that Sonoma is the sole remaining proponent of the counterproposal. Accordingly, the Fritzes’ comments will be addressed solely to Sonoma.

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This proposal entailed a number of changes in channel for other allotments and facilities, including a substitution of Channel 282C2 for Channel 249C2 at Mason, Texas. The Fritzes currently have pending an application for construction permit for a new FM broadcast station to operate on Channel 249C2 at Mason, File No. BPH-960826MS. Clearly, therefore, the Fritzes have an interest in the outcome of the instant proceeding. In addition, two other applicants, Foxcom, Inc. and BK Radio, have pending applications mutually exclusive with that of the Fritzes (File Nos. BPH-960826MH and BPH-960823MF, respectively).²

2. On July 21, 1999, the Commission issued a Public Notice, Report No. 2346, in which it sought comment on the Sonoma counterproposal, among others, in the instant proceeding. That notice provided fifteen days, through August 5, 1999, in which to submit such comments. As the Fritzes had previously learned of potential technical difficulties with the proposed substitution of Channel 282C2 for Channel 249C2 at Mason, they began to inquire into filing comments in response to the notice. The Fritzes have no direct interest in any other counterproposal in the instant proceeding and therefore did not intend to express an opinion as to any other proposal. Upon contacting counsel for First Broadcasting, WBAP/KSCS Operating, Ltd., Blue Bonnet Radio, Inc., and Hunt Broadcasting as part of this process, however, counsel for the Fritzes learned that Sonoma planned to withdraw its counterproposal. Moreover, on August 3, 1999, Sonoma did, in fact, submit

² It should be noted that, in a separate proceeding, the Commission has proposed to eliminate the mutual exclusivity through the allotment of additional channels to Mason. See *Notice of Proposed Rule Making* in MM Docket 99-215, DA 99-1142, released June 11, 1999. In that proceeding, at the request of BK Radio, the Commission has proposed to allot Channel 238C2 to Mason and has also noted the availability of Channel 273C2 for another of the applicants. The Fritzes have filed Comments and Reply Comments in that proceeding indicating that they support the proposal only in the event that the Fritz application retains the originally allotted channel, Channel 249C2.

its “Motion to Withdraw and Dismiss Counterproposal.” A copy of that motion was served on counsel for the Fritzes and received prior to the comment deadline of August 5, 1999.

3. In Sonoma’s Motion, it unequivocally expressed its request that its “Motion be granted and its Counterproposal in this Docket withdrawn and dismissed.” “Motion to Withdraw and Dismiss Counterproposal” at 3. Furthermore, attached to the Motion was a Declaration, under penalty of perjury, executed by Roy E. Henderson, President and sole shareholder of Sonoma. That Declaration equally unequivocally stated: “Sonoma Media Corporation hereby moves to withdraw and dismiss its above-referenced Counterproposal in Docket 98-198.” In neither the Motion nor the Declaration is there any reference to withdrawal of only a portion of the Counterproposal. The statements in both documents quite clearly request the dismissal of the entire Counterproposal.

4. Thus, as of the comment filing deadline of August 5, 1999, the Sonoma Counterproposal had been withdrawn. As this counterproposal was the only portion of the instant proceeding in which the Fritzes have an interest, they had no reason at that time to file comments and did not do so.

5. Thereafter, on August 13, 1999, Sonoma submitted its so-called “Erratum to ‘Motion to Withdraw and Dismiss Counterproposal’ to Withdraw and Modify to ‘Motion to Withdraw and Dismiss Part of Counterproposal.’” In that pleading, Sonoma states that it actually wishes to withdraw only the portion of its Counterproposal related to Cross Plains, Texas, and wishes to continue to prosecute the remaining portions of its Counterproposal. This change, however, represents not simply an “Erratum” but a substantive change in Sonoma’s request. Moreover, this change was submitted some eight days after the deadline for submitting comments on the counterproposals in this proceeding. Such an about-face at this time represents a blatant abuse of

the Commission's processes and must be rejected. To do otherwise would create a precedent that should be unacceptable for the chaos it could create with the Commission's processes.

6. It strains credulity to believe that the previous complete withdrawal of and request for dismissal of Sonoma's entire counterproposal was, in fact, an error. As stated above, the original withdrawal motion stated quite clearly, and in no uncertain terms, Sonoma's request for a dismissal of its entire Counterproposal. Furthermore, the Declaration executed by Mr. Henderson was equally clear and unequivocal. Presumably, Mr. Henderson read his Declaration before he signed it under penalty of perjury, and he would therefore be aware of its contents. Thus, both counsel for Sonoma and its principal were entirely cognizant of the substance of the withdrawal and requested dismissal of the Counterproposal. Only some ten days later, and eight days after the comment deadline, did Sonoma apparently have a change of heart and reverse its course. Such games with the Commission's procedures cannot be countenanced.

7. To allow Sonoma to change its mind at this late date and reinstate its Counterproposal would deprive the Fritzes of their procedural rights. At the comment deadline, the Sonoma Counterproposal had been withdrawn, and therefore, there was no proposal before the Commission in which the Fritzes had an interest. Thus, there was no reason for the Fritzes to file comments in this proceeding, and they did not do so. Then, only after the expiration of the comment period, Sonoma has tried to reverse course and reinstate its proposal, thereby depriving the Fritzes of an opportunity to submit comments by the deadline announced by the Commission. Such procedural gamesmanship represents a flagrant abuse of the Commission's processes which must not be countenanced.

8. As set forth above, the Fritzes have learned of potential technical difficulties with the proposed substitution of Channel 282C2 at Mason. The Fritzes have contacted their engineer, who is preparing a technical study of the matter. Upon completion, the Fritzes will submit their engineer's findings on this matter. This should be unnecessary, however. Having timely withdrawn its Counterproposal, Sonoma should not be permitted untimely to reinstate it.

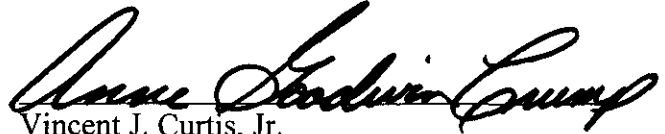
9. The Fritzes further state their continuing opposition to the substitution of a new channel for Channel 249C2 at Mason. As the Fritzes have noted in MM Docket 99-215, all of the Mason applications were filed in 1996 and have remained pending for the three years which have elapsed since that time. The Fritz application was filed with the expectation that Channel 249C2 was the channel on which a construction permit was awarded, and that expectation continued through the time that the application has remained pending. Furthermore, the Fritzes believe that the station proposed in that application can best maximize its service to the public on Channel 249C2. While the Commission traditionally has considered FM channels of the same class to be equivalent, the fact remains that the choice of channel limits the locations at which a station may place its transmitter to maximize its service area. Given the extremely small size of Mason (population 2,022), it is especially important to be able to maximize the proposed Mason station's facilities in order to be able to survive economically.

WHEREFORE, the premises considered, the Fritzes respectfully request that Sonoma's Counterproposal be dismissed in its entirety as requested by Sonoma during the comment period.

Respectfully submitted,

JAYSON D. FRITZ AND JANICE M. FRITZ

By:

A handwritten signature in black ink, appearing to read "Anne Goodwin Crump", written over a horizontal line.

Vincent J. Curtis, Jr.

Anne Goodwin Crump

Their Attorneys

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August 26, 1999

CERTIFICATE OF SERVICE

I, Mary A. Haller, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that true copies of the foregoing Comments in Opposition to "Erratum to 'Motion to Withdraw and Dismiss Counterproposal' to Withdraw and Modify to 'Motion to Withdraw and Dismiss Part of Counterproposal'" were sent this 26th day of August, 1999, by United States mail, postage prepaid, to the following:

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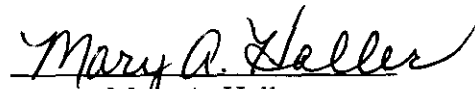
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*BY HAND DELIVERY


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